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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Richard Wagner,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-08188-PCT-DWL

ORDER

15 Plaintiff challenges the denial of his applications for benefits under the Social
16 Security Act (“the Act”) by the Commissioner of the Social Security Administration
17 (“Commissioner”). The Court has reviewed Plaintiff’s opening brief (Doc. 16), the
18 Commissioner’s answering brief (Doc. 20), and Plaintiff’s reply brief (Doc. 21), as well as
19 the Administrative Record (Doc. 15, “AR”), and now affirms the Administrative Law
20 Judge’s (“ALJ”) decision.

21 **I. Procedural History**

22 On March 19, 2018, and January 28, 2019, Plaintiff filed applications for benefits,
23 in both instances alleging disability beginning on October 1, 2017. (AR at 18.) The Social
24 Security Administration (“SSA”) denied Plaintiff’s applications at the initial and
25 reconsideration levels of administrative review and Plaintiff requested a hearing before an
26 ALJ. (*Id.*) On April 14, 2020, the ALJ held a telephonic hearing. (*Id.*) Following the
27 hearing, the ALJ requested and received additional evidence, including a consultative
28 examination. (*Id.*) On July 30, 2021, the ALJ held a supplemental telephonic hearing, but

1 “[d]ue to difficulties connecting with the vocational expert scheduled for the hearing,” the
 2 ALJ “held the record open so interrogatories could be obtained and submitted from a
 3 vocational expert.” (*Id.* at 19.) Finally, on September 29, 2021, after considering those
 4 interrogatories and offering Plaintiff a chance to respond (which Plaintiff declined), the
 5 ALJ issued an unfavorable decision. (*Id.* at 18-31.) The Appeals Council later denied
 6 review. (*Id.* at 1-3.)

7 II. The Sequential Evaluation Process And Judicial Review

8 To determine whether a claimant is disabled for purposes of the Act, the ALJ
 9 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
 10 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
 11 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
 12 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
 13 § 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a “severe”
 14 medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). At
 15 step three, the ALJ considers whether the claimant’s impairment or combination of
 16 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
 17 of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically
 18 found to be disabled. *Id.* At step four, the ALJ assesses the claimant’s residual functional
 19 capacity (“RFC”) and determines whether the claimant is capable of performing past
 20 relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If not, the ALJ proceeds to the fifth and
 21 final step, where she determines whether the claimant can perform any other work in the
 22 national economy based on the claimant’s RFC, age, education, and work experience. 20
 23 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

24 An ALJ’s factual findings “shall be conclusive if supported by substantial
 25 evidence.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may set aside
 26 the Commissioner’s disability determination only if it is not supported by substantial
 27 evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).
 28 Substantial evidence is relevant evidence that a reasonable person might accept as adequate

1 to support a conclusion considering the record as a whole. *Id.* Generally, “[w]here the
 2 evidence is susceptible to more than one rational interpretation, one of which supports the
 3 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947,
 4 954 (9th Cir. 2002) (citations omitted). In determining whether to reverse an ALJ’s
 5 decision, the district court reviews only those issues raised by the party challenging the
 6 decision. *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

7 III. The ALJ’s Decision

8 The ALJ found that Plaintiff had not engaged in substantial, gainful work activity
 9 since the alleged onset date and had the following severe impairments: “lumbar and
 10 thoracic degenerative disc disease, degenerative joint disease of the bilateral hips,
 11 peripheral neuropathy, cirrhosis, hepatic steatosis, macrocytic anemia and
 12 thrombocytopenia secondary to chronic liver failure, and obesity.” (AR at 21.)¹ Next, the
 13 ALJ concluded that Plaintiff’s impairments did not meet or medically equal a listing. (*Id.*
 14 at 21-24.) Next, the ALJ calculated Plaintiff’s RFC as follows:

15 [T]he claimant has the residual functional capacity to perform sedentary
 16 work as defined in 20 CFR 404.1567(a) and 416.967(a) except he is able to
 17 lift and carry twenty pounds occasionally and ten pounds frequently, sit about
 18 six hours out of an eight-hour day, and stand and/or walk about four hours
 19 out of an eight-hour day. He can occasionally climb ramps and stairs, but
 20 can never climb ladders, ropes and scaffolds. He can occasionally balance,
 21 stoop, kneel, crouch and crawl. He must avoid concentrated exposure to
 22 extreme temperatures, vibration, and hazards, including moving machinery
 23 and unprotected heights.

24 (*Id.* at 24.)

25 As part of this RFC determination, the ALJ evaluated Plaintiff’s symptom
 26 testimony, concluding that although Plaintiff’s “medically determinable impairments could
 27 reasonably be expected to cause the alleged symptoms,” his “statements concerning the
 28 intensity, persistence and limiting effects of these symptoms are not entirely consistent

¹ The ALJ also noted that that Plaintiff had the non-severe impairments of hypertension, alcoholic encephalopathy, hypothyroidism, colitis, and left shoulder degenerative joint disease. (AR at 22.)

1 with the medical evidence and other evidence in the record during the relevant time period
 2 for the reasons explained in this decision.” (*Id.* at 25.) The ALJ also evaluated opinion
 3 evidence from various medical sources as follows: (1) Dr. D. Subin, state agency medical
 4 consultant (“persuasive”); (2) Dr. A. Dipsia, state agency medical consultant
 5 (“persuasive”); (3) Dr. Karine Lanca, state agency medical consultant (“persuasive”); (4)
 6 Dr. Azizollah Karamlou (“persuasive”); (5) Dr. Glenn Kunsman (“less persuasive”); and
 7 (6) Dr. Jennifer auf der Springe (“not persuasive”). (*Id.* at 27-29.)

8 Based on the testimony of a vocational expert, the ALJ concluded that although
 9 Plaintiff was unable to perform his past relevant work as a merchandise deliverer or
 10 regional manager, he was capable of performing other jobs that exist in significant numbers
 11 in the national economy, including office manager, sales manager, and personnel recruiter.
 12 (*Id.* at 29-31.) Thus, the ALJ concluded that Plaintiff is not disabled. (*Id.* at 31.)

13 IV. Discussion

14 Plaintiff presents three issues on appeal: (1) whether the ALJ “failed to properly
 15 evaluate [his] transferrable skills under [SSR] 82-41”; (2) whether the ALJ “failed to apply
 16 the proper legal standard when evaluating [his] obesity in accordance with SSR 19-2p”;
 17 and (3) whether the ALJ’s “hypothetical presented to the [vocational expert] neglected to
 18 include all limitations supported by evidence.” (Doc. 16 at 2.) As a remedy, Plaintiff seeks
 19 a remand for calculation of benefits or, in the alternative, a remand for additional
 20 proceedings. (*Id.* at 14.)

21 A. **Transferable Skills**

22 1. The ALJ’s Analysis

23 During steps four and five of the sequential analysis, the ALJ made various findings
 24 regarding Plaintiff’s past work. As an initial matter, the ALJ stated that Plaintiff “has past
 25 relevant work as a merchandise deliverer (DOT 299.477-010; medium as generally
 26 performed, heavy as actually performed; SVP 2) and a composite job consisting of regional
 27 manager (DOT 183.117-010; sedentary as generally performed; SVP 8) and merchandise
 28 deliverer (DOT 299.477-010; medium as generally performed; SVP 2) that was performed

1 as skilled (SVP 8) work at the heavy exertional level. As required by SSR 82-62, this work
2 was substantial gainful activity, was performed long enough for the claimant to achieve
3 average performance, and was performed within the relevant period.” (AR at 29.)

4 On the one hand, the ALJ accepted the vocational expert’s opinion that “the
5 exertional limitations included in [Plaintiff’s RFC] precluded him from performing any of
6 his past relevant work.” (*Id.*) On the other hand, the ALJ concluded that Plaintiff had
7 “acquired work skills from [his] past relevant work”—specifically, the ALJ concluded that
8 Plaintiff’s past work “required the following skills: training, record keeping, supervision,
9 planning, customer service, cost control, personnel management, and marketing
10 management.” (*Id.* at 30.) Accordingly, for step-five purposes, the ALJ asked the
11 vocational expert “if any occupations exist which could be performed by an individual with
12 the same age, education, past relevant work experience, and [RFC] as [Plaintiff], and which
13 require skills acquired in [Plaintiff’s] past relevant work but no additional skills.” (*Id.*)
14 The ALJ responded by identifying three such jobs that exist in significant numbers in the
15 national economy: office manager, sales manager, and personnel recruiter. (*Id.*)

16 2. The Parties’ Arguments

17 Plaintiff argues that “[d]espite the fact that there was no supporting evidence in the
18 record, the [vocational expert] determined that [he] had several transferrable skills
19 including training, record keeping, supervision, planning, customer service, cost control,
20 and marketing management.” (Doc. 16 at 5.) Plaintiff argues that this determination was
21 erroneous because “there is no evidence that [he] had any prior experience in sales. Neither
22 the ALJ, nor the [vocational expert], indicated which skills transferred to which job.
23 Additionally, the 9th Circuit has already held that ‘customer service skills’ is too vague to
24 constitute a transferrable skill. Thus, it is far from clear that [he] could perform the job of
25 office manager, sales manager or personnel recruiter with ‘very little, if any, vocational
26 adjustments in terms of tools, work processes, work setting, or the industry.’” (*Id.* at 7,
27 quoting AR 30-31.)

28 The Commissioner responds that “[t]he ALJ properly considered Plaintiff’s

1 transferable skills.” (Doc. 20 at 2.) According to the Commissioner, Plaintiff’s own
2 testimony during the hearing provided the necessary foundation for the ALJ’s finding, as
3 Plaintiff testified that he worked as a driver and then regional manager of a company called
4 Tradewinds Enterprises for 10 years and had “very numerous” job duties during that
5 period, including attending to emails, scheduling vacations, hiring and firing, interviewing,
6 and training. (*Id.* at 2-3.) The Commissioner also notes that the three jobs identified by the
7 vocational expert during step five (*i.e.*, office manager, sales manager, and personnel
8 recruiter) “all have an SVP [specific vocational preparation level] of 8 or below, which is
9 at or below the same SVP of Plaintiff’s past relevant work as a Regional Manager at
10 Tradewinds,” and argues that this equivalency is significant because, under SSR 82-41,
11 “[t]he relevant question is not whether Plaintiff performed the specific duties of the job,
12 but whether he possessed the skills necessary to perform that job. Here, the evidence
13 establishes that he did.” (*Id.* at 4-5.)

14 In reply, Plaintiff argues that “[t]he law is very clear that when a finding is made
15 that a claimant has transferrable skills, the acquired skills must be identified and specific
16 occupations to which the acquired work skills are transferrable must be cited in the ALJ’s
17 decision.” (Doc. 21 at 3.) Plaintiff contends that, here, “neither the [vocational expert],
18 nor the ALJ specified which skills transferred to which job” and that the vocational expert’s
19 “testimony conflicts with the duties [Plaintiff] actually performed in his past relevant work,
20 including sales experience.” (*Id.* at 3-4.) Plaintiff also accuses the Commissioner of
21 “mistakenly believ[ing] that because [he] previously performed skilled work, that it does
22 not matter what skills transfer to what jobs, as long as those jobs are also skilled.” (*Id.* at
23 4.)

24 3. Analysis

25 The Court finds no harmful error in the ALJ’s evaluation of transferable skills.
26 “SSR 82-41 states, in relevant part . . . [that when] a finding is made that a claimant has
27 transferable skills, the acquired work skills must be identified, and specific occupations to
28 which the acquired work skills are transferable must be cited in the ALJ’s decision.” *Bray*

1 *v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1223 (9th Cir. 2009) (cleaned up). “SSRs
 2 do not carry the ‘force of law,’ but they are binding on ALJs nonetheless.” *Id.* at 1224
 3 (citation omitted). Although “the SSR presumes that ALJs will be relying on expert
 4 testimony to determine whether a claimant has transferable skills . . . [i]t is the ALJ, and
 5 not the VE, who is responsible for making findings.” *Id.* at 1225.

6 Here, as an initial matter, the ALJ followed the procedural requirements imposed
 7 by SSR 82-41 and made the findings required by SSR 82-41. In the underlying decision,
 8 the ALJ specifically identified the transferable skills that Plaintiff had acquired from his
 9 past work (*i.e.*, “training, record keeping, supervision, planning, customer service, cost
 10 control, personnel management, and marketing management”) and specifically identified
 11 the occupations to which those skills were transferrable (*i.e.*, office manager, sales
 12 manager, and personnel recruiter). (AR at 30.) Those are the findings that SSR 82-41
 13 requires. *Compare Barnes v. Berryhill*, 895 F.3d 702, 705 (9th Cir. 2018) (“Although
 14 Barnes’s past relevant work included a skilled job, the ALJ made no finding regarding what
 15 skills, if any, Barnes had acquired from that work and whether his skills were transferable
 16 to semi-skilled work as a ‘semi-conductor assembler’ or ‘production clerk.’ The ALJ
 17 therefore erred by failing to make the written findings required by SSR 82-41.”).

18 The ALJ’s findings on these points were also supported by substantial evidence.
 19 During the hearing, Plaintiff testified that he previously worked for 10 years at Tradewinds
 20 Enterprises (which is in the business of delivering radioactive pharmaceuticals); that his
 21 last role at Tradewinds Enterprises, which he held for five years, was “Southern California
 22 Regional Manager”; and that his duties or tasks in that role were “[v]ery numerous” and
 23 included “[e]mails, scheduling vacations, hiring, firing, interviewing, training, and just the
 24 general—just to overlook how the company was run and to run it efficiently, as far as
 25 Southern California was concerned.” (AR at 46-47.) The vocational expert, in turn, opined
 26 that the corresponding DOT title and code for that job was 183.117-010, Regional
 27 Manager, with an SVP of 8. (AR at 428.) The vocational expert further opined that
 28 Plaintiff had obtained the following “[a]quired job skills” from that job: “Training, record

1 keeping, supervision, planning customer service, cost control, personnel management,
 2 marketing management.” (AR at 430.) Finally, the vocational expert opined that the jobs
 3 of office manager, sales manager, and personnel recruiter each qualify as an “occupation
 4 to which the skills transfer that the individual could perform.” (*Id.*)

5 There is a colorable argument that, because the ALJ was entitled to rely on the VE’s
 6 undisputed testimony on these topics, the ALJ’s resulting decision was necessarily
 7 supported by substantial evidence. *See, e.g., Ramirez v. Comm’r of Soc. Sec. Admin.*, 463
 8 F. App’x 640, 643 (9th Cir. 2011) (“[T]he ALJ properly relied on the vocational expert’s
 9 testimony at the second hearing concerning plaintiff’s past relevant work, the
 10 transferability of skills to the semiskilled position of ‘information clerk,’ and her ability to
 11 perform unskilled work as an ‘interviewer.’”); *Osenbrock v. Apfel*, 240 F.3d 1157, 1163
 12 (9th Cir. 2001) (“The VE testified that [Mr. Osenbrock’s past work] experience qualified
 13 Mr. Osenbrock to work as a timekeeper. The fact that Mr. Osenbrock did not testify that
 14 he had worked as a timekeeper is not dispositive of the transferability of his existing skills
 15 to the position of timekeeper. . . . Here, the VE testified that transferring from the position
 16 of mill supervisor to that of timekeeper would be a move from skilled to semi-skilled work.
 17 The VE testified that the duties Mr. Osenbrock performed as a mill manager were similar
 18 to those required of a timekeeper. Substantial evidence supported the ALJ’s finding that
 19 Mr. Osenbrock’s prior work experience qualified him to perform the duties of a
 20 timekeeper.”). *See generally Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (“A
 21 VE’s recognized expertise provides the necessary foundation for his or her testimony.
 22 Thus, no additional foundation is required.”).²

23 ² *See also Solomon v. Comm’r of Soc. Sec. Admin.*, 376 F. Supp. 3d 1012, 1019 (D.
 24 Ariz. 2019) (“The ALJ’s transferability determination was supported by the vocational
 25 expert’s testimony, which is itself substantial evidence sufficient to uphold the ALJ’s
 26 decision.”); *Spencer v. Berryhill*, 2018 WL 4006528, *15 (C.D. Cal. 2018) (citing
 27 *Osenbrock* for the proposition that “uncontradicted evidence by VE of transferable skills
 28 constitutes substantial evidence”); *Myers v. Comm’r of Soc. Sec. Admin.*, 2016 WL
 4157206, *4 (D. Or. 2016) (“The ALJ is entitled to rely on the VE or other specialist if
 there is an issue in determining whether a claimant’s work skills can be used in other work.
 At the administrative hearing, the ALJ asked the VE whether ‘there would be transferable
 skills from [Myers’s] past work into [Myers’s RFC] that would not require significant
 vocational readjustment.’ The VE answered in the affirmative, identified the occupation
 of telephone solicitor, and described Myers’s transferable skills that applied to this work.”)

1 Nevertheless, even if a more searching inquiry into the foundation for the vocational
 2 expert's opinions is required, the Court still finds no harmful error. The VE opined, and
 3 Plaintiff does not appear to dispute on appeal, that the best analogue in the DOT for his
 4 prior work as a Southern California Regional Manager for Tradewinds Enterprises was the
 5 job of Regional Manager, DOT 183.117-010. That DOT listing, in turn, states that this job
 6 has an SVP of 8 and involves the following tasks: "Confers with customers and
 7 representatives of associated industries to evaluate and promote improved and expanded
 8 services in area. Develops plans for efficient use of materials, machines, and employees.
 9 Reviews production costs and product quality, and modifies production and inventory
 10 control programs to maintain and enhance profitable operation of division. Reviews
 11 operations of competing organizations, and plans and directs sales program to develop new
 12 markets, using sales aids, advertising, promotional programs, and field services. Directs
 13 personnel program. Directs preparation of accounting records. Recommends budgets to
 14 management." *Id.* It was rational for the vocational expert to opine (AR at 430), and for
 15 the ALJ to conclude (AR at 30), that Plaintiff's performance of this job for five years shows
 16 that he possesses the skills of training, record keeping, supervision, planning customer
 17 service, cost control, personnel management, and marketing management.

18 It was also rational for the vocational expert to opine (AR at 430), and for the ALJ
 19 to conclude (AR at 30), that the aforementioned skills would be transferrable to the
 20 positions of office manager, sales manager, and personnel recruiter. All of those positions
 21 require SVPs at or below the SVP of 8 associated with Plaintiff's prior work as a Regional
 22 Manager. *Osenbrock*, 240 F.3d at 1163 (emphasizing that, under SSR 82-41,
 23 "transferability . . . is most probable and meaningful among jobs in which . . . the same or
 24 a lesser degree of skill is required . . . (i.e., from a skilled to a semiskilled or another skilled
 25 job, or from one semiskilled to another semiskilled job) . . ."). *Cf. Solomon*, 376 F. Supp.

26
 27 The ALJ was entitled to conclude based on the VE's testimony that Myers retained the
 28 ability to perform work that exists in the national economy.") (citations omitted). *But see*
Frost v. Berryhill, 2018 WL 1509197, *8 (D. Or. 2018) (rejecting the Commissioner's
 argument that "reliance on VE testimony is sufficient" when it comes to transferable-skills
 findings).

3d at 1019 (“The Court further notes that the DOT descriptions for the jobs of project estimator [new occupation] and civil engineer [past work] contain several similarities. For example, and as the vocational expert testified, both occupations involve pricing skills. Additionally, a project estimator ‘[a]nalyzes blueprints, specifications, proposals, and other documentation to prepare time, cost, and labor estimates,’ and a civil engineer ‘[p]repares or directs preparation and modification of reports, specifications, plans, construction schedules, environmental impact studies, and designs for project.’ Moreover, ‘civil engineer’ has [an SVP] Level of 8, whereas ‘project estimator’ only has an SVP Level of 7, meaning that the project estimator occupation requires a lesser degree of skill.”); *Spencer*, 2018 WL 4006528 at *15 (“[A] plain reading of the DOT demonstrates the multiple similarities between Plaintiff’s past work as a telemarketer and the appointment clerk occupations. Contrary to Plaintiff’s argument, the mere fact that the positions have some differences and do not have identical skill sets does not undermine the ALJ’s transferability finding.”) (citations omitted).

B. Obesity

1. The Parties’ Arguments

Plaintiff argues that the ALJ violated SSR 19-2p by failing to consider all of the functional limitations caused by his obesity. (Doc. 16 at 7-10.) More specifically, Plaintiff contends that the ALJ only considered the effect of his obesity on his “pulmonary, musculoskeletal, endocrine, or cardiac functioning” and thus failed to address the effect of his obesity (in combination with his other impairments) “on his ability to sit for long periods of time” and/or on his “ability to sustain physical and mental function over time.” (*Id.* at 8-9.)

The Commissioner disagrees and defends the sufficiency of the ALJ’s reasoning. (Doc. 20 at 6-7.) According to the Commissioner, SSR 19-2p merely requires an “individualized assessment” of the impact of obesity on each claimant and the ALJ provided such an individualized assessment here. (*Id.*)

In reply, Plaintiff argues that the Commissioner “does not dispute that the ALJ failed

1 to address 1) the impact [his] obesity, combined with neuropathy and lumbar DDD, has on
 2 his ability to sit for long periods of time; and 2) the impact [his] obesity has on his ability
 3 to sustain physical and mental function over time.” (Doc. 21 at 4-5.)

4 2. Analysis

5 The Court finds no harmful error in the ALJ’s obesity-related analysis. Under SSR
 6 19-2p, an ALJ “must consider the limiting effects of obesity when assessing a person’s
 7 RFC” and, “[a]s with any other impairment, [must] explain how [the ALJ] reached [his or
 8 her] conclusion on whether obesity causes any limitations.” *See* Social Security Ruling
 9 19-2p, 2019 WL 2374244, *1 (2019).

10 The ALJ satisfied those requirements here. During step two of the sequential
 11 analysis, the ALJ specifically acknowledged Plaintiff’s obesity and identified it as a
 12 “severe” impairment. (AR at 21.) During step three, the ALJ “acknowledged the potential
 13 impact of obesity in causing or contributing to co-existing impairments as required by
 14 Social Security Ruling 19-2p” but concluded that “there is no evidence of any specific or
 15 quantifiable impact on pulmonary, musculoskeletal, endocrine, or cardiac functioning.
 16 Therefore, the claimant’s obesity does not meet or equal a listing. The claimant’s weight,
 17 including the impact on his ability to ambulate as well as his other body systems, has been
 18 considered within the limitations of the claimant’s [RFC] described below.” (*Id.* at 24.)
 19 Finally, during step four, the ALJ again acknowledged Plaintiff’s obesity but identified
 20 various reasons why Plaintiff’s related symptom testimony was unworthy of credence.
 21 (*See, e.g., id.* at 27-28 [“Medical imaging revealed . . . the claimant was frequently obese,
 22 he frequently had reduced sensation and diminished reflexes in his lower extremities, and
 23 he occasionally had a reduced range of motion in his back and used a wheelchair. However,
 24 the claimant admitted to being noncompliant with his medications, refused any pain
 25 management, frequently had a normal or only slightly abnormal gait without an assistive
 26 device, and frequently had full strength and otherwise intact sensation and reflexes
 27 throughout.”]; *id.* at 29 [“Although the claimant was obese for most of the relevant period,
 28 occasionally used a wheelchair, and had decreased sensation in his lower extremities, he

frequently had a normal or slightly abnormal gait without an assistive device and full strength and otherwise normal sensation and reflexes throughout and his symptoms improved with conservative treatment.”].) This analysis was sufficient to comply with SSR 19-2p. *See, e.g., Keyes v. Comm’r of Soc. Sec.*, 2023 WL 2166917, *5 (E.D. Cal. 2023) (“SSR 19-2p repeatedly refers to ‘considering’ a person’s obesity in connection with the other steps of the sequential process. Unlike other social security authority, nothing in SSR 19-2p requires an ALJ to articulate specific findings regarding any impairment.”) (citations omitted); *Montagna v. Kijakazi*, 2022 WL 565601, *4 (W.D. Tenn. 2022) (“SSR 19-2p only requires that obesity be considered and that the conclusion reached regarding its effects be explained.”); *Kelsey K. v. Acting Comm’r of Soc. Sec.*, 2022 WL 2302584, *3 (W.D. Wash. 2022) (“Plaintiff argues the ALJ failed to follow [SSR] 19-2p. Yet the ALJ considered the plaintiff’s obesity at step two and found that it was a severe, medically determinable impairment; the ALJ also considered obesity at step three—and noted that no medical source had concluded that plaintiff’s obesity equaled a listed impairment. When deciding plaintiff’s RFC, the ALJ also considered the effects of obesity (in combination with other impairments). According to SSR 19-2p, this was not error.”).

C. Hypothetical To Vocational Expert

1. The Parties’ Arguments

Plaintiff’s final argument is that the ALJ’s hypothetical to the vocational expert “failed to include all of [Plaintiff’s] limitations supported by the record.” (Doc. 16 at 11.) More specifically, Plaintiff argues that various medical records show “there are objective medical findings explaining [his] chronic back and left shoulder pain” and that it was therefore “unreasonable to assume that an individual with these severe impairments would be able to sit for six (6) hours a day, and be able to climb ramps and stairs, balance, stoop, kneel, crouch and crawl for more than two and a half (2.5) hours a day. In short, the ALJ failed to properly assess all of [his] impairments in determining the degree of [his] functional loss.” (*Id.* at 12-13.)

In response, the Commissioner defends the sufficiency of the ALJ’s analysis. (Doc.

20 at 8-11.) The Commissioner notes that the ALJ determined that Plaintiff's degenerative back impairments were "severe" during step two, limited Plaintiff to sedentary work activity, and also considered Plaintiff's left-shoulder joint disease. (*Id.* at 8.) More broadly, the Commissioner notes that ALJ considered all of the objective medical evidence in compliance with the applicable regulations and permissibly considered that Plaintiff was able to manage his impairments through conservative treatment, "was able to work for almost 20 years with the back pain he now alleges to be disabling," and was non-compliant with prescribed medications and courses of treatment. (*Id.* at 8-10.) Accordingly, as for Plaintiff's argument that "the ALJ's hypothetical to the vocational expert [was] not based upon substantial evidence because it did not include his subjective allegations," the Commissioner contends this argument is flawed because "limitations from properly discounted evidence need not be included in the RFC finding." (*Id.* at 10-11.)

In reply, Plaintiff contends that the Commissioner "did not deny that the ALJ's RFC finding failed to include all of [his] claimed limitations" and reiterates his earlier arguments regarding the objective medical evidence. (Doc. 21 at 6-7.)

2. Analysis

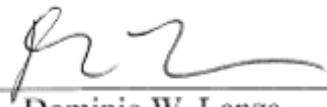
The Court finds no harmful error in the ALJ's formulation of the hypothetical to the vocational expert. At bottom, Plaintiff argues that it was error for the ALJ to conclude as part of the RFC-formulation process (AR at 24), and then ask the vocational expert to assume (AR at 429), that Plaintiff would be able to sit for six hours a day and be able to occasionally climb ramps and stairs, balance, stoop, kneel, crouch, and crawl. However, several medical sources opined that those were appropriate exertional limitations. (*Id.* at 80-81 [Dr. Subin]; *id.* at 110-11 [Dr. Dipsia]; *id.* at 116-17 [Dr. Lancaster]; *id.* at 443-44 [Dr. Karamlou].) The ALJ, in turn, deemed all of those medical sources' opinions "persuasive." (*Id.* at 27-28.) Notably, Plaintiff does not challenge, on appeal, the ALJ's evaluation of those medical sources' opinions. Nor does Plaintiff challenge, on appeal, the ALJ's rationale for discrediting his symptom testimony. It follows that Plaintiff cannot demonstrate error in the ALJ's formulation of the RFC or resulting hypothetical to the

1 vocational expert. *Sayer v. Kijakazi*, 2022 WL 1153944, *1 (9th Cir. 2022) (“Because the
2 ALJ permissibly weighed Sayer’s testimony, Sayer’s challenges to the ALJ’s residual
3 functional capacity determination likewise fail.”). *See generally Valentine v. Comm’r Soc.*
4 *Sec. Admin.*, 574 F.3d 685, 691-92 & n.2 (9th Cir. 2009) (properly discredited evidence
5 need not be included in RFC).

6 Accordingly,

7 **IT IS ORDERED** that the decision of the ALJ is **affirmed**. The Clerk shall enter
8 judgment accordingly and terminate this action.

9 Dated this 5th day of December, 2023.

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14 Dominic W. Lanza
15 United States District Judge
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